

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia Company,
and JB EXPLORATION 1, LLC, a
West Virginia Company,**

Plaintiffs,

vs.

**Civil Action No.: 18-C-2
Presiding: Judge Lorensen
Resolution: Judge Carl**

**BLACKROCK ENTERPRISES, LLC,
a West Virginia Company, and
MICHAEL L. BENEDUM,**

Defendants.

**ORDER DENYING PLAINTIFFS' AND THIRD-PARTY DEFENDANTS'
MOTION FOR PROTECTIVE ORDER WITHOUT PREJUDICE**

This matter came before the Court this 17 day of July 2019 upon Plaintiffs' and Third-Party Defendants' Motion for Protective Order. The Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants, Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc., by counsel, Ronda L. Harvey, Esq., have filed the instant motion for protective order, seeking this Court enter a protective order to prohibit the deposition of Mrs. Debra V. Broda Morgan, sole member of Plaintiff BB Land, LLC, member of Plaintiff JB Exploration 1, LLC, and Vice-president of Third-Party Defendant Jay-Bee Oil & Gas, Inc., pursuant to the apex deposition rule. See Pl's Mot., p. 2, 5, 7. Upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FILED IN OFFICE

JUL 17 2019

**JEFF FARNSWORTH
CIRCUIT COURT CLERK
PLEASANTS COUNTY**

FINDINGS OF FACT

1. This matter was commenced with the filing of the Complaint on January 11, 2018, alleging claims of breach of contract, tortious interference with a contract, and fraud in the inducement with regard to a Lease Acquisition Agreement (hereinafter the "LEA") between Plaintiff JB Exploration 1 (hereinafter "Plaintiff") and Defendant Blackrock Enterprises, LLC (hereinafter "Defendant" or "Blackrock"). *See* Compl.; *see also* Pl's Mot., p. 1.
2. On a prior date, Blackrock Enterprises, LLC's Amended Answer, Counterclaim and Third-Party Complaint was filed.
3. On March 29, 2019, Blackrock served Notices of Rule 30(b)(7) Depositions upon Plaintiffs and Third-Party Defendants, requesting that each designate corporate representatives. *See* Pl's Mot., p. 2.
4. On a prior date, Plaintiffs and Third-Party Defendants produced Brian Paugh, Vice-president Land for Plaintiffs and Third-Party Defendant Jay-Bee Oil & Gas, Inc. and Randy Broda, member of Plaintiff JB Exploration 1, LLC and President of Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc. as Plaintiffs' and Third-Party Defendants' corporate representatives in response to Blackrock's Notice of Rule 30(b)(7) Video Deposition. *Id.* at 2-3; *see also Id.* at Ex. A.
5. On or about June 11, 2019, Blackrock's counsel requested to take the deposition of Mrs. Debra V. Broda Morgan, sole member of Plaintiff BB Land, LLC, member of Plaintiff JB Exploration 1, LLC, and Vice-president of Third-Party Defendant Jay-Bee Oil & Gas, Inc. *Id.* at 2-3.

6. On or about July 12, 2019, Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants, Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc., filed the instant Plaintiffs' and Third-Party Defendants' Motion for Protective Order, seeking this Court enter a protective order to prohibit the deposition of Mrs. Debra V. Broda Morgan, pursuant to the apex deposition rule, arguing Blackrock has not demonstrated that Mrs. Morgan demonstrates specific and unique knowledge or information related to this case. *Id.* at 1, 5, 7.

CONCLUSIONS OF LAW

The general provisions governing discovery are governed by Rule 26 of the West Virginia Rules of Civil Procedure. In particular, Rule 26(c) of the West Virginia Rules of Civil Procedure governs protective orders. Rule 26(c) of the West Virginia Rules of Civil Procedure provides, in pertinent part,

...Upon motion by a party or by the person from whom discovery is sought, *including a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action...* the court...may make an order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense...

W. Va. R. Civ. P. 26(c)(emphasis added).

The Court has reviewed Plaintiffs'/Third-Party Defendants' Motion for Protective Order and their reasons seeking an Order from this Court entering a protective order to prohibit Mrs. Morgan's deposition. The Court has reviewed the exhibits attached to the instant motion, including letters and email communications both before and after the June 11, 2019 date in which Mrs. Morgan's deposition in this civil action was first sought. The Court notes it was proffered that these exhibits purported to show not just the discussions as it related to Mrs. Morgan's proposed deposition, but the parties' overall "attempt[s] to reach agreement regarding

the scope of the subject matters and dates for the depositions of the parties” from April 2019 on. *See* Pl’s Mot., p. 2. Finally, the Court reviewed the Affidavit of Mrs. Morgan.

However, counsel for Plaintiffs/Third-Party Defendants has proffered no Certificate of Conference or other Affidavit of counsel verifying that it conferred in good faith with Blackrock’s counsel regarding the deposition of Mrs. Morgan. The Court notes the correspondence attached to the instant motion which discussed discovery and deposition issues in general, but finds this does not satisfy Rule 26(c)’s requirement that the parties include “a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action”. *See* W. Va. R. Civ. P. 26(c).


Accordingly, the Court finds the instant motion must be denied without prejudice, as the requisite certification of conference has not been provided to the Court. Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants, Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.’s Motion for Protective Order is hereby DENIED WITHOUT PREJUDICE.

CONCLUSION

The Court does hereby ADJUDGE and ORDER Plaintiffs, BB Land, LLC and JB Exploration 1, LLC, and Third-Party Defendants, Jay-Bee Production Company and Jay-Bee Oil & Gas, Inc.’s Motion for Protective Order is hereby DENIED WITHOUT PREJUDICE.

The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

Enter: July 17, 2019



JUDGE MICHAEL D. LORENSEN
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

I hereby certify that the annexed
instrument is a true and correct copy
of the original on file in my office.
Attest: Millie Farnsworth, Circuit Clerk
Pleasants County of West Virginia

